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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,958	03/17/2004	Karl Pfleger	16113-326001/GP-134-10-US	4198

26192 7590 06/29/2010  
FISH & RICHARDSON P.C.  
PO BOX 1022  
MINNEAPOLIS, MN 55440-1022

EXAMINER
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PULLIAM, CHRISTYANN R

ART UNIT	PAPER NUMBER
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2165

NOTIFICATION DATE	DELIVERY MODE
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06/29/2010

ELECTRONIC

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3 RECORD OF ORAL HEARING  
4 UNITED STATES PATENT AND TRADEMARK OFFICE  
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7 BEFORE THE BOARD OF PATENT APPEALS  
8 AND INTERFERENCES  
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11 *Ex parte* KARL PFLEGER and BRIAN LARSON  
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14 Appeal 2010-000434  
15 Application 10/802,958  
16 Technology Center 2100  
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19 Oral Hearing Held: June 8, 2010  
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22 Before JAY P. LUCAS, STEPHEN C. SIU, and DEBRA K. STEPHENS  
23 Administrative Patent Judges.  
24

25  
26 ON BEHALF OF THE APPELLANT:  
27

28 JOHN F. CONROY, ESQ. (via telephone from Germany)  
29 Fish & Richardson P.C.  
30 P.O. Box 1022  
31 Minneapolis, Minnesota 55440

1           The above-entitled matter came on for hearing on Tuesday,  
2 June 8, 2010, commencing at 9:02 a.m., at the U.S. Patent and Trademark  
3 Office, 600 Dulany Street, Alexandria, Virginia, before Kevin C. Carr,  
4 Notary Public.

5           JUDGE LUCAS: This is Appeal No. 2010-000434, Serial No.  
6 10/802,958. Mr. John Conroy is on the telephone at this point. Mr.  
7 Conroy, you are representing Google?

8           MR. CONROY: Yes, I am.

9           JUDGE LUCAS: Okay. I think it's time to start. It's 9:02. Mr.  
10 Conroy?

11          MR. CONROY: May it please the Board, I'd like to thank you  
12 all for providing me with this opportunity to present Google's case and for  
13 considering the briefings on this issue.

14          If there are no objections, I'd like to talk first about the  
15 obviousness rejection under 35 U.S.C. 103(a) and then move on to the  
16 rejection under 35 U.S.C. 101.

17          In this application, Google is seeking to patent a technology  
18 that improves the ranking of search results. Search results are the documents  
19 that are returned in response to a search query. The documents are  
20 responsive to the search query but this technology supplements the text  
21 based factors that are considered in identifying responsive documents, so  
22 that users can be provided with the best search results first. They are at the  
23 top of the list.

24          A bit of context may be in order. I suspect that everybody is  
25 kind of familiar with the idea of going to a search engine, typing in some  
26 search terms and getting a list of results.

1           When large document databases such as the Internet are  
2 searched, the order that the documents are returned is very important. You  
3 can imagine that for a typical search query, there might be hundreds or  
4 thousands or tens of thousands, however many search results are actually  
5 responsive to the terms a particular user enters into the search engine.

6           Since there are so many possible responsive results, it is really  
7 painful for users to go through and sort through those large number of  
8 responsive results.

9           There are a couple of different ways that search engines  
10 supplement the terms, kind of term-based searching, so that the best results  
11 are provided at the top of the list, provided first in the list. One way and  
12 kind of the way that made Google famous was they are going to look at the  
13 links that are made to a document in the Internet, the thought being that if  
14 somebody who posts something on the Internet bothers to link to a  
15 document, that's kind of a good indicator that the person thought this  
16 document was valuable, he or she thought this was worthwhile.

17           A search engine will go and count these links to kind of get an  
18 idea of how worthwhile or valuable that document is and rank the  
19 documents accordingly, even above other documents that are less responsive  
20 to the terms of the search that are received from a user.

21           The technology in effect leverages kind of this human input by  
22 linking the documents in order to rank the documents as they are returned by  
23 the search.

24           The present technology also leverages human user input. In  
25 this case, the search engine looks at the document selections that are made  
26 by other users after they have conducted a search with a search query.

1           In other words, if documents are presented in a search result set  
2 and the users often select that document, that document is ranked higher for  
3 future searchers than it would be otherwise.

4           The terminology that's used in this application for this process,  
5 it's used at least in a pair of the cited references or the references that are  
6 cited against the document, is the term "popularity." Basically, how much  
7 these human factors -- they embody these non-search term based factors that  
8 reflect how likely the document is to be responsive to the search and to be of  
9 interest to the people who do a search query.

10           There are two references that are cited against this application  
11 that also describe how the rankings of documents can be changed based on  
12 user selection, based on user interaction with previous searches.

13           Those are the Barrett reference, U.S. Patent Publication No.  
14 2003-0135490, and the Bowman reference, U.S. Patent Publication No.  
15 2002-0049752.

16           The Barrett reference actually serves -- it's one of the two  
17 references cited in the present 103(a) rejection. Both of these references  
18 work in similar ways, in that they base the magnitude of a change --

19           JUDGE LUCAS: I'm sorry, Mr. Conroy. The rejection was  
20 based on Barrett and Whitman, was it not?

21           MR. CONROY : It was. Bowman was cited in an earlier  
22 Office Action and kind of presents a further description of the  
23 state-of-the-art, the scope and the content of the prior art that needs to be  
24 considered in an obviousness rejection.

25           JUDGE LUCAS: As Bowman really wasn't part of this appeal,  
26 I think it would be improper to go into Bowman at this point.

1                   MR. CONROY: I did in fact mention Bowman in the appeal  
2 brief. That's fine. I'll not discuss it at all.

3                   JUDGE LUCAS: Can I focus you a little bit, Mr. Conroy?

4                   MR. CONROY : Yes.

5                   JUDGE LUCAS: Right now, we understand the rejection to be  
6 based on Barrett in view of Whitman, Barrett having most of the steps of the  
7 method claim, and basically ranking by a popularity index, a popularity  
8 scoring, if you will. The Examiner then proposes that the number of  
9 different items that Barrett uses to calculate his popularity scoring, he  
10 admits, does not include looking at the search phrases and decreasing the  
11 popularity based on the search query, but he turns to Whitman which scores  
12 search phrases only for the teaching of basing a ranking on the breadth of the  
13 search phrase.

14                   He would like to basically insert Whitman into Barrett. That  
15 would be the key point that would be useful for you to discuss.

16                   MR. CONROY: Okay. I'll start with first of all, the idea of  
17 inserting Whitman into Barrett is inserting a square peg into a round hole.  
18 Whitman is interested in ranking search queries. In other words, he's trying  
19 to say this search query is particularly good, this search query is particularly  
20 bad. It has nothing whatsoever to do with the ranking of documents.

21                   What Whitman is doing is he's looking at the breadth of a  
22 search query and intending to rank search queries that are narrower, higher  
23 than search queries that are broader. It's truly a ranking of search queries.

24                   Whitman doesn't consider the breadth of the search query per se  
25 in ranking the documents that are returned by the search query. In other

1 words, what the present claims are directed to and what Barrett actually does  
2 is rank documents, not ranking search queries.

3 Further, the way that Barrett chooses to rank documents is  
4 based upon -- in response to user selection. I don't want to go so far as to  
5 claim it teaches away but at least hints away from the idea of making the  
6 change in popularity, a decrease would increase breadth of a search query.

7 This is the feature that is actually common in both Barrett and  
8 Bowman and why I was addressing both of those references, that seemed to  
9 be the state-of-the-art at the time we filed. Like I said, if it doesn't actually  
10 teach away from what we claimed, it at least hints away from it.

11 Both of those documents base the magnitude of the change in  
12 the documents' ranking upon the position of the document in a collection of  
13 search results when selected.

14 There is an equation that I've reproduced in the Brief. It's the  
15 enhanced popularity score equation from Bowman. I don't know if you have  
16 the equation in front of you, but there's a numerator in that equation that  
17 relates to the sum of some of the products of the fact that it was selected, the  
18 time and position when it was selected.

19 In other words, the numerator -- if the document that was  
20 selected was the first one in a set of search results, the numerator of that  
21 enhanced popularity score is very small. If the document that was selected  
22 was say number 500 in a collection of search results, the numerator that goes  
23 into this enhanced popularity score is much larger.

24 Although this does not directly relate to the query breadth in the  
25 sense that possibly you could have a narrower query and a document was  
26 selected lower within that narrower query, chances being all things being

1 equal, if user selections were distributed equally throughout the number of  
2 terms or throughout the documents that were returned to the search query,  
3 then this is the exact opposite of what we're seeking to claim.

4           One of the ways I kind of think of it is as a subject that was  
5 very dear to me when I was an undergrad, in terms of say if I was an  
6 engineer and there were 250 engineers graduating in my class. Of those 250  
7 engineers, there were seven females. You might want to try to rank the  
8 popularity to determine the popularity of those seven females based upon  
9 their selection, the selection for some guy out on a date on a Friday night.

10           Because there was such a constrained set, a small set of  
11 possibilities, you might be tempted to kind of discard that selection,  
12 somebody asking them out on a date on a Friday night, because the chances  
13 are there are only seven of them, there are 200 and some odd male engineers,  
14 chances are they are going to get out on a Friday night.

15           On the other hand, if you have the exact opposite situation, say  
16 English lit majors, where there are 250 women for ten male English lit  
17 majors, every one of those selections looks a lot more important. In other  
18 words, if some guy in the English Lit Department had 250 choices and he  
19 chose number 60, you are generally tempted to award a greater value, greater  
20 merit to that selection to say this person really had a lot of options and he  
21 and she went to that one option.

22           That is exactly the situation that Barrett and Bowman are both  
23 using, they are saying when a document is ranked lower in a search result  
24 and selected, that is really a strong indication that document was pretty  
25 popular. However, when the document is right at the top, it is not quite as



1 much of an indication because there are only a couple of options presented,  
2 it's not quite as important.

3 JUDGE LUCAS: Mr. Conroy, I know with this  
4 communication, it's difficult for us to break in. First of all, you have  
5 discovered exactly why I took a minor in English Literature while I was in  
6 engineering school.

7 MR. CONROY: A friend of mine did, too.

8 JUDGE LUCAS: Second and possibly more relevant, don't  
9 you find in Whitman a teaching of the value of the few hits? I'm looking at  
10 Column 5, around line 55, where he seems to recognize also the value of  
11 ranking where there are few hits, that is that becomes a more valuable search  
12 because the breadth of the query is far less.

13 Why would that not be an applicable teaching? By the way,  
14 somewhere in the back of your brain, I'm going to ask you about 101 and  
15 Claim 29. While you're giving an answer to this, understand that in a couple  
16 of minutes, something like that is coming along. Okay?

17 MR. CONROY: Okay. Like I discussed earlier, Whitman is  
18 concerned with suggesting search queries. The fact that a search query is  
19 particularly narrow in Whitman's mind makes it more relevant, more likely  
20 to be a useful search query. That doesn't have much to do if anything at all  
21 with changing the popularity of the ranking of a document that's responsive  
22 to a search query.

23 Frankly, the references of record both lead away if not actively  
24 teach away from assigning heavier weight when there are fewer references,  
25 when the search query is narrower. That has never been acceptable for  
26 establishing obviousness.

1 JUDGE LUCAS: I see your point. Thank you. In the few  
2 minutes that are remaining, we are all waiting here for the Supreme Court to  
3 opine on the Bilsky case, but right now, the state of the law is transition or  
4 tied to a machine, a machine or transition test. Let's go to Claim 29 and tell  
5 me how you feel that is statutory.

6 MR. CONROY: First of all, please do understand this is a bit  
7 of a moving target even before Bilsky issued by the Supreme Court. It  
8 would have been fairly easy for me during prosecution to have amended  
9 Claim 29 and incorporated a machine or transformation, and we wouldn't be  
10 having this conversation. That said, the claim does involve documents.  
11 Like it or not, documents are technology. They are a device. It's hard to  
12 imagine a technology that's more fundamental to human existence.

13 Excuse me for getting kind of off the wall here. If you don't  
14 have writing and you don't have documentation, we're stuck as  
15 hunter-gatherers somewhere. A document is a machine. It serves a  
16 technical purpose. It has a technical effect. It's intimately tied to Claim 29.

17 For example, when identifying user interaction with the first  
18 document, that's identifying user interaction with a machine that serves a  
19 technical purpose. Like I said, it's a very fundamental machine but it's still a  
20 machine.

21 JUDGE LUCAS: Interesting. You're almost out of time. I'd  
22 like to ask Judge Stephens or Judge Siu if they have any questions for you.

23 JUDGE SIU: No questions.

24 JUDGE STEPHENS: I have no questions.

25 JUDGE LUCAS: Do you want to give us a sentence to close  
26 up, Mr. Conroy?

1                   MR. CONROY: Just thank you very much for considering the  
2 briefing and for speaking with me today.

3                   JUDGE LUCAS: Thank you very much. Enjoy Germany and  
4 have a good afternoon.

5                   Whereupon, at 9:22 a.m., the proceedings were concluded.